

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
APPELLATE SIDE

WRIT PETITION NO.2773 OF 1993

1. Honorary Secretary

Talini Imadadiah Committee

Mistry High School

Ratnagiri.

2. Ex-officio Secretary

School Committee

Mistry High School

Ratnagiri.

: Petitioners

V/s.

Shri Wasif Pasha Tajoddin Jagirdar

Indian Inhabitant, aged about 29

years, residing at 274, Old

Lakshmi Chawl, Dogagaon Road

Solapur--413 001.

: Respondent

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Mr.D.A.Nalavade for the petitioners.

Mr.S.G.Kudle for the respondent.

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**CORAM : S.A. BOBDE, J.**

January 19, 2005.

ORAL JUDGEMENT

1. The petitioner no.1 is Hon. Secretary of Mistry High School, Ratnagiri. The petition questions the legality and validity of the order of the School Tribunal, Mumbai, dated 30.4.1993. By the impugned order, the School Tribunal has held that the respondent has not voluntarily resigned and that, in any case, the resignation has been accepted by the wrong authority. In this view of the matter, the School Tribunal has set aside the said resignation and directed reinstatement of the respondent with back wages.

2. The respondent was employed as an Asstt. Teacher in the petitioner-school. It appears that he wrote the letter of resignation dated 5.9.1990. He tendered it on 18.12.1990 with an intention that it take effect from June 1991. Thereafter the respondent filed an appeal before the School Tribunal which has been allowed by the impugned order. The learned School Tribunal took the view that the resignation letter was obtained under duress by the management of the school in that the respondent was threatened by the Headmaster and some others that if he did not resign, he would be killed. This appears to be based solely on a criminal complaint made by the respondent to the Court of the Magistrate at Solapur on 5.3.1991 alleging that on 3.2.1991 at about 10 p.m. he

was threatened. It is surprising to note that the learned School Tribunal has relied on the averments in the complaint in spite of it having brought to its notice that the complaint was dismissed under section 203 of the Cr.P.C. on 28.2.1992. In my view, this approach has resulted in perversity. Indeed, mere filing of a complaint regarding coercion cannot be taken into account without having regard to whether the complaint had any substance or not.

3. Mr.Nalavade, learned counsel for the petitioners further pointed out that the order of the School Tribunal suffers from a gross error of law in that the Tribunal has not taken into account several documents which show how the respondent is said to have misconducted himself with a girl student whom he used to teach at home. These documents which contain serious allegations of misconduct and which are listed at exh.I-1 have not even been referred to by the Tribunal. Indeed, the complaint of the girl makes very unsavoury reading and shows conduct unbefitting that of a teacher. It appears that after the girl's letter dated 27.8.1990, the respondent drafted his letter of resignation dated 5.9.1990 and tendered it on 18.12.1990.

4. Mr.Kudle, learned counsel for the respondent submitted that the events would show that the letter was not tendered as alleged by the petitioners. However, this submission does not take into account the fact that the inward register, which is also ignored by the Tribunal, shows that the letter of resignation was indeed tendered on 18.12.1990 vide exh.'B' to the petition. Another important document which has been ignored by the Tribunal and which has a bearing whether the resignation was voluntary or not is the pay-sheet of January 1991 at exh.'C' in which the respondent is said to have endorsed the fact that he has resigned. In June 1991, he is said to have endorsed the fact that he has resigned with effect from the next academic year i.e. June 1991. A perusal of the attendant circumstances leads to the strong conclusion that the respondent resigned voluntarily and on his own accord in order to avoid acquiring a bad reputation. It is not necessary to dilate on this aspect further. It must, however, be pointed out that the Tribunal has ignored relevant and crucial documents which has resulted in a perverse finding of fact that the respondent did not resign voluntarily. This finding is, therefore, set aside.

5. The other reason given by the Tribunal, viz., that the

respondent's resignation was accepted by the School Committee and not by the management is equally untenable. It is obvious from the record that the decision to accept the respondent's resignation was taken by Ta'Alimi Imdadiah Committee, Ratnagiri-Bombay. The resolution of 21.1.1991 states that it was resolved that the School Committee be authorised to issue the respondent a letter of acceptance. The School Committee appears to have issued the letter of acceptance on 20.3.1991. This delay, according to the learned counsel for the petitioners, is because the Principal was on leave during this period. Be that as it may, I am satisfied that the resignation was not forced and was accepted by proper authority i.e. the management.

6. Mr.Kudle, learned counsel for the respondent, submitted that there is non-compliance of section 7 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 read with rule 40 of the Rules made thereunder. According to the learned counsel, the letter of resignation ought to have been given by registered post. Section 7 reads as follows:-

"If any employee intends to resign his post  
in any private school, at any time after

the appointment date, he shall draw up a letter of resignation in duplicate and sign both the copies of that letter and put the date thereon. He may then forward one copy to the Management by registered post and keep the other copy with him."

It is obvious on a plain reading that the Legislature deliberately used the word "may" in the context of forwarding the copy of the resignation to the management by registered post. This has been done in order to enable the teacher to tender the resignation in person and obtain an acknowledgement for the same. Therefore, merely because the letter was not forwarded by registered post, it cannot be held to be illegal as being in contravention of section 7.

7. Mr.Kudle, learned counsel for the respondent, further submitted that the resignation is contrary to rule 40, sub-rule (3), which reads as follows:-

"(3) An employee entitled to vacation shall not give notice of resignation during the vacation or so as to cover any part of the vacation. The notice of resignation shall

not be given within a month after the beginning of the first term of the year."

According to the learned counsel, since a vacation intervened between 18.12.1990 and the resignation was intended to be effective from June 1991, the notice of resignation covered a part of the vacation and is, therefore, illegal. It is obvious that rule 40 is intended for the benefit of the management as has been held by this Court in N.J.B. Ashram v. Rajendra (2004 (2) Mh.L.J. 909). I am in agreement with that view. Moreover, sub-rule (3) is intended to avoid curtailing the notice period. It is intended to exclude the vacation period from being included in the notice period. Rule 40 itself provides for the consequence that would follow if the notice period is shorter than three months. I am of view that merely because the notice covers a part of the vacation, it would not vitiate the resignation itself in a case such as the present one. In the present case, it makes no difference.

8. In this view of the matter, the petition succeeds and the rule is made absolute in terms of prayer clause (a) which reads as follows:-

"a) this Honourable Court may issue a Writ of certiorari or any order, direction or writ in the nature of certiorari, and call for the record and proceedings on the subject matter of this writ petition, and after perusing the legality and validity thereof, be pleased to quash and set aside, the judgement and order dated 30.4.1993 passed by the learned Presiding Officer, School tribunal, Bombay."

No order as to costs.

Sd/-

S.A. BOBDE, J.